

BOARD OF APPEALS CASE NO. 5105

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BEFORE THE

APPLICANTS: Russell Sprague & Patio Enclosures *

ZONING HEARING EXAMINER

**REQUEST: Enlarge a non-conforming structure *
to construct a sunroom over an existing porch;
1509 Clayton Road, Joppa ***

OF HARFORD COUNTY

Hearing Advertised

Aegis: 11/29/00 & 12/6/00

Record: 12/1/00 & 12/8/00

HEARING DATE: January 17, 2001

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Russell Sprague, is requesting a variance to enlarge his dwelling pursuant to Section 267-19C(1) of the Harford County Code to construct a sunroom over an existing porch within the required non-conforming 24.3 foot total side yard setback (proposed 20 feet) and a required non-conforming 8.1 and 16.2 foot side yard setback (existing 5.5 and 14.5 foot side yard setbacks) in an R1/Urban Residential District.

The subject property is located at 1509 Clayton Road, Joppa, MD 21085 and is more particularly identified on Tax Map 65, Grid 1C, Parcel 56. The subject parcel consists of 1.0 acres, more or less, is zoned R1/Urban Residential and is entirely within the First Election District.

The Applicant appeared and testified that there is an existing porch on the house that he wishes to enclose as a sunroom. The lot is an oddly shaped, long and narrow parcel. Upon questioning by the Hearing Examiner, the witness indicated that the enclosure would not extend any further than the existing porch.

Mr. Terry Hunt of Patio Enclosures, Inc. appeared on behalf of the Applicant. Mr. Hunt indicated that the existing house was never placed correctly on the lot years ago when it was built. This misplacement was not discovered in 1979 when rear additions were added to the house. The misplacement of the home coupled with the narrowness of the lot created non-conforming setback encroachments that have existed at least since 1979.

The Department of Planning and Zoning, in recommending approval succinctly summarized the existing situation as follows:

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“The subject property was created prior to 1957. The lot is a long, narrow parcel approximately one acre in size fronting along Clayton Road. Improvements consist of a single-family dwelling that was originally constructed in 1971. In 1979 the Applicant constructed a 20 foot by 40 foot addition (enclosed are permits for the original dwelling #786-71 and addition #1634-79-Attachments 6 and 7). Other improvements consist of a paved blacktopped driveway to the left side of the lot with a large paved turnaround and parking area in front of the house. The drive continues to the rear of the house along the right side where Applicant parks his motor home. Directly behind the dwelling is an above-ground pool. (No permit was located for the pool) The existing well is located to the front of the lot and the septic system to the rear. There is a row of mature trees across the front and rear of the property and the adjoining property is densely wooded.”

The Department went on to report:

“The existing dwelling was not properly located at the time of construction. This error was not discovered in 1979 when the Applicant applied for the addition to the rear of the dwelling. The existing side yard setbacks for the non-conforming structure are 5.5 feet and 14.5 feet....The request is a result of the narrow width of the lot and the errors made during the construction of the dwelling in the 1970’s. The Applicant’s proposal will not have an adverse impact on the intent of the Code or the adjacent properties.”

Ms. Bonnie Hall appeared in opposition to the request. Ms. Hall owns the parcel adjoining the subject property and expressed concern that the Applicant was getting ever nearer her property. While the witness was legitimately concerned about further encroachment toward her property by the Applicant, the witness offered no evidence that this request would in any way bring the Applicant any closer to the property line than has existed since the early 1970’s and later, 1979. Additionally, the witness offered no evidence that the parcel did not contain unique and unusual features.

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CONCLUSION:

The Applicant is requesting a variance to enlarge his dwelling pursuant to Section 267-19C(1) of the Harford County Code to construct a sunroom over an existing porch within the required non-conforming 24.3 foot total side yard setback (proposed 20 feet) and a required non-conforming 8.1 and 16.2 foot side yard setback (existing 5.5 and 14.5 foot side yard setbacks) in an R1/Urban Residential District.

Section 267-19C(1) of the Harford County Code provides:

“The sum of the side yard widths of any such lot or plot shall be thirty percent (30%) of the width of the lot, but in no case shall any one (1) side yard be less than ten percent (10%) of the width of the lot.”

The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, “the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed(or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.

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2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

Based on the testimony of the Applicant, the Applicant's witnesses and the report of the Department of Planning and Zoning, the Hearing Examiner finds that the subject parcel has unique and unusual topographical features, namely the narrowness and overall non-conformity of the parcel. Also unusual is the improper placement of the existing house 31 years ago which has continued to contribute to the need for variances today. It would be impossible for this Applicant to comply with the requirements of the modern Code provisions without a complete demolition of the existing structures. That alone would be sufficient hardship to warrant approval, however, the existing dwelling and rear additions have existed for 31 years without creating a nuisance or disturbance to neighboring properties of any kind and to require the Applicant to move or remove existing structures would be an unwarranted hardship and practical difficulty.

The Hearing Examiner therefore, finds that the Applicant has met each of the tests of Cromwell set forth by the Maryland Court of Special Appeals and recommends approval of the subject request subject to the following conditions:

1. The Applicant obtain any and all necessary permits and inspections.
2. The Applicant obtain a permit for the existing above-ground pool.
3. The setbacks approved in this case shall not be further reduced.
4. That during construction of the sunroom, care be given by contractor and its employees to avoid storage or use of the adjoining property.

Date JANUARY 26, 2001

William F. Casey
Zoning Hearing Examiner